

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Revision No.639 of 2022(O&M)

Date of Decision: April 18, 2022

Anwar Mohammad @ Sonu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Akbarjit Singh, Advocate for the petitioner.

Mr.B.S.Sewak, Addl.AG, Punjab.

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HARINDER SINGH SIDHU, J.

Challenge herein is to the order dated 24.11.2021 passed by Ld.Judge, Special Court, Jalandhar, whereby, the application of the petitioner for grant of default bail under Section 167(2) Cr.P.C, was dismissed.

The petitioner is an accused in case FIR No.125 dated 18.05.2021 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act No.61 of 1985, registered at Police Station Division No.8, Jalandhar. 40 Injections of Buprenorphine (02 ml. each) were allegedly recovered from him.

As the prosecution failed to file the report under Section 173 Cr.P.C (*challan*) within 180 days, the petitioner moved an application for default bail under Section 167(2) Cr.P.C, which has been dismissed vide the impugned order. The order is reproduced hereinbelow:

“Present: Sh.Jagat Pal, Advocate for the applicant.
Sh.Anil Kumar Gill, Addl.PP for the State.

*This order of mine will dispose off bail application
moved under Section 167(2) Cr.P.C. No doubt accused-applicant*

was arrested on 18.05.2021 U/s 22 of NDPS Act and this application seeking bail by way of default U/s 167(2) Cr.P.C was moved on 22.11.2021 after almost 6 months i.e. expiry of 180 days. But before this application was disposed off, police report U/s 173 Cr.P.C was filed on 23.11.2021 and report of Chemical Examiner is filed today. Challan has already been presented. So, applicant is not entitled to bail by way of default U/s 167(2) Cr.P.C. Therefore, this application is dismissed. Papers be attached with the main file.”

A perusal of the impugned order reveals that the petitioner was arrested on 18.05.2021 and the challan was filed on 23.11.2021 i.e. after expiry of 180 days. The indefeasible right of the petitioner to seek default bail under Section 167(2) Cr.P.C accrued immediately on expiry of 180 days of his arrest i.e. on 13.11.2021. He moved the application for default bail on 22.11.2021. It was only thereafter that the challan was filed on 23.11.2021. In the circumstances, the filing of challan on 23.11.2021 i.e. subsequent to filing of the application, cannot take away the right of the petitioner guaranteed by the Statute.

Accordingly, this petition is allowed. The order of the Ld. Judge, Special Court, Jalandhar, dismissing the application of the petitioner for default bail, is set aside.

The petitioner is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

April 18, 2022

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No